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12 Birchcliff Avenue,
Kitchener, Ontario,

February 28, 1966.

Mr. Lancelot J. Smith,
Chartered Accountant,
48 Yonge Street,
Toronto, Ontario.

Dear Mr. Smith,

Enclosed is the Brief that we discussed in your office on Tuesday, February 22, 1966. Enclosed also, are two recent news clipping that indicate that there is obviously a scramble for, and opposition to many of the tax exemptions that are presently available both here in Ontario as well as in other parts of the world.

It appears to me that this and other evidence of disputed exemptions could be avoided if there were simply no exemptions allowed. If there were no exemptions, all land would be taxable for locals, just as the owners would be chargeable for heat, light or for any other requirement. All cost would then be by the persons who wish to support these organizations.

In my opinion, the fourth recommendation is the most sensible and the only one that is workable. I therefore urge the committee to consider and recommend it to the legislature.

I would be happy to discuss this taxation-exemption problem with you or your colleagues at any mutually convenient time.

Sincerely,

C. P. Fisher.

CPF:wp.
Encls.

BRIEF

TO

ONTARIO COMMITTEE ON TAXATION

SUBMITTED BY

CHAS P. FISHER

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ABSTRACT

This Brief deals with the assessment and payment of local improvement charges by school boards and church officials. It specifically deals with sites that are commonly used for both a school and a church. Existing legislation clearly deals with church sites and also with school sites as separate entities but does not deal with combined church and school sites.

The Brief clearly shows that a large portion of the population in Ontario benefits from the existing statutes, at the expense of the remainder of the population.

Recommendations that would eliminate the inequities in payment of local improvements are presented.

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OBJECT AND SCOPE

The object of this Brief is to bring to the attention of Ontario Committee on Taxation a serious inequity and to urge positive corrective action. The statutes that permit this inequity are specifically R.S.O. 1960, Chapter 223, Local Improvement Act and R.S.O. 1960, Chapter 23, Assessment Act.

EXISTING LEGISLATION

Two sections of R.S.O. 1960 that are of particular interest are presented here:

R.S.O. 1960, Chapter 223, Section 61 - Local Improvement Act

Land on which a church or place of worship is erected or which is used in connection therewith, and the land of a University, college or seminary of learning, whether vested in a trustee or otherwise, except schools maintained in whole or in part by a legislative grant or a school tax, are liable to be specifically assessed for local improvements, notwithstanding the provisions of the Assessment Act R.S.O. 1960, C. 23.

R.S.O. 1960, Chapter 23, Section 4 -- Assessment Act

All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation. (1) (2) (3) not applicable.

(4) The Buildings and Grounds of and attached to or other-

> wise "bona fide" used in connection with and for the purposes of a University, high school, public or separate school, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such Institution but not if otherwise occupied.

These sections clearly state that school sites are exempt while church sites are taxable for local improvements. Existing legislation ignores sites that are used for both schools and churches.

OBSERVATIONS

In nearly all cases, where there is a combined separate school and church site, the site includes one and often two street intersections. There are then, two and often three streets that abut these sites. Usually, the school is constructed towards the rear of the site, away from the street lines, leaving the front for a future church and rectory. This pattern of development has been followed frequently enough to be considered "Standard Practice."

These sites are usually much larger than that required if they were to be used only for a school. This statement is supported by the observation that eventually, churches and rectories are built upon almost all of these sites. These sites should be reclassified as combined church and school sites.

Prior to the erection of a church or rectory, these sites are declared school sites, thus are exempt from taxation, as permitted by R.S.O. 1960, Chapter 23, Section (4). Only when the church or rectory is finished is the municipality allowed to assess and collect for local

improvement charges on lands that abut the non-school portion of these sites. Usually, the locals have been fully or partially paid from municipal funds by the time the land becomes non-exempt. The municipality is not permitted, under existing legislation to recover the costs of the locals that have been paid from general funds.

SPECIFIC EXAMPLE

For example, let us consider the development of the combined school and church site on University Avenue in the City of Waterloo. This site is rectangular in shape and is bounded by Hemlock and Balsam Streets as well as University Avenue and on the fourth side by the rear of a row of residential lots. Balsam Street is parallel to University Avenue. Hemlock is parallel to the rear of the residential lots.

The site was acquired by the City of Waterloo Separate School Board in 1955. A school located close to the rear of the residential lots and fronting on University, was erected shortly after the land was acquired. During 1964 and 1965, a rectory, fronting on Hemlock, and a church fronting on University near the corner of Hemlock were constructed.

Local improvement charges were almost completely discharged on this property at the time that the rectory and church were built. These local improvements were paid from general municipal funds. Therefore all the taxpayers in the community have in fact contributed to these costs. Investigation of other sites show similar development patterns.

The total value of the local improvements on the church-rectory portion of the University Avenue site has subsequently been assessed at over $3000.00. There are approximately 2000 similar sites in Ontario, therefore, the total value, if installed and assessed at the present time would be approximately $6,000,000.00. Other site consideration could

place the present value of these locals at $50,000,000.00 approximately. Regardless of the exact present value of these locals, it certainly amounts to many millions of dollars in inequities.

GENERAL STATEMENT

Inequities will never be eliminated from Ontario Statutes, however, this particular inequity affects such a large portion of the population that it cannot be overlooked any longer. Nearly 1/3 of the population is freed from the burden of paying for local improvements that abut their churches while the remainder is not. This remainder of the population, in effect, is required to support a church that many of them do not wish to support. Many taxpayers may be upset if they were to realize that they were indirectly required to support a church other than by choice as well as to voluntarily support other selected churches.

It is obvious that no religious group should be able to classify proposed church sites as fitting into a group that is exempt from local improvement charges. If these sites are acquired by any group, whether a church or building is erected or not, they should be assessed for abutting local improvements.

RECOMMENDATIONS

Obviously, all religious groups should be treated equally. In order to ensure equality, all churches should be either exempt, or all churches should be required to pay for abutting local improvements. As stated previously, this is in fact not possible here in Ontario.

There are several methods that could be adopted to correct this situation. One possible solution would be to amend R.S.O. 1960, Chapter 23 Section 4 (4) so that when land that has been exempt from

payment of locals is reclassified as non-exempt, then the municipality should have the right to recover the cost of these local improvements plus a reasonable interest rate on these costs that might be based on a most recent municipal bond issue. Another solution would be, however, to amend the statutes so that all churches and religious groups would be exempt from the payment of local improvements that abut their properties. In view of the fact that there are many fringe area groups that may qualify, this latter solution would become extremely complicated and is somewhat unrealistic. A third solution would be to clarify the existing legislation, stating clearly that all religious groups are required to pay for the cost of the local improvements with specified exceptions. A fourth solution would be to change existing legislation so that neither schools nor churches would be allowed any exemptions. If this final solution were adopted, then cost of support for both the church and the school would fall directly upon the shoulders of the people who by choice, wish to support them. This fourth solution appears to be the most equitable way for distributing local improvement charges and I strongly recommend that it be adopted.

Chas P Fisher

C. P. Fisher,
12 Birchcliff Avenue,
Kitchener, Ontario.

February 28, 1966.

Time 25 Feb 1966

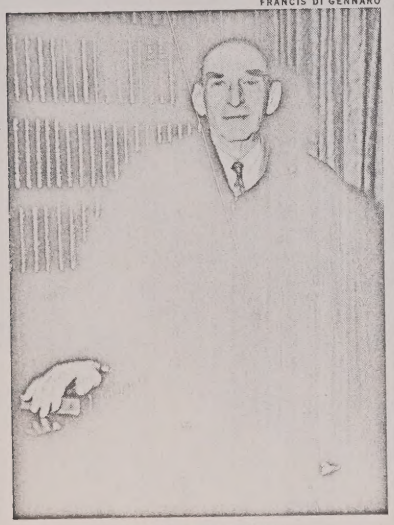
CONSTITUTIONAL LAW

Should Religion Be Taxed?

In her attack on the U.S. tradition of granting tax exemption to church-owned property, Atheist Madalyn Murray O'Hair filed a widely watched suit in Maryland that no constitutional scholar can lightly dismiss. Such exemption, she argued, hikes taxes for other property owners and violates the First Amendment because it amounts to taxation in support of religion.

Last week the Maryland Court of Appeals unanimously rebuffed Appellant O'Hair (who now lives in Mexico). But in speaking for Maryland's highest court, Judge Reuben Oppenheimer frankly conceded her basic point. "Economically," he said, religious organizations "are in the same position as though they paid taxes to the city and state and then received back the amounts paid in the form of direct grants." Moreover, "members of the general public pay higher taxes than they would if the exemptions were not in effect."

FRANCIS DI GENNARO



JUDGE OPPENHEIMER
Minion, not master.

"Logically, this argument is strong," continued the judge. But logic "is a minion of the law, not its master." More important, such exemption aids "the general welfare, apart from any benefit that religious organizations derive from it." Many church activities bring "substantial benefit to the community, such as aid to the poor and aged, day nurseries, care of the sick, and efforts to eliminate racial inequalities. Programs such as these serve public needs; the performance of these functions by private agencies saves the state the expense of providing the same services."

Not only is it impossible to separate the secular from the nonsecular in such church activities, said Oppenheimer, but tax exemption is well established for other charitable organizations performing the same kind of services. If religious groups were forced to give up exemptions, he concluded, "serious questions of unconstitutional discrimination might arise." In short, despite logic, Maryland believes that the Constitution can and does permit this particular reality of U.S. life. Whether Maryland is right must still be decided by the Supreme Court—if, and when, it considers Mrs. O'Hair's appeal.

KITCHENER-WATERLOO RECORD, Wed., Feb. 23, 1966 21

Rules Eventide Home Not Exempt From Tax

Judge Charlton ruled Tuesday that the A. R. Goudie Eventide Home, 369 Frederick St., is not exempt from municipal taxes.

His judgment, reserved from an earlier hearing, is the latest development in a battle by the Salvation Army to have all its properties in the province freed from municipal taxes.

The city excludes the army's other properties from taxation and has made grants towards some army projects. But Kitchener's stand on the army-operated Eventide Home is that it is a commercial operation and should therefore pay taxes.

The home, built in 1962, provides accommodation for up to 71 old people, charging them $100 a month.

There are currently 64 residents, said Brig. Richard McIlvenny today. Of these, 14 of limited means have their accommodation subsidized by provincial government grants.

The city moved to have the home assessed for taxes last year and the army appealed to the court of revision. Tuesday's ruling means the home owes about $11,450 in property taxes for last year and the tax bill this year will be slightly higher, said assessment commissioner C. E. Staebler.

Up to 1965 the home had paid taxes on just the superintendent's living quarters, about $300 a year.

The Salvation Army is scheduled to appear before the provincial legislature's private bills committee Thursday, seeking legislation which will exempt all its properties throughout Ontario from municipal taxes.

Assistant city solicitor J. J. Kelly, acting on an earlier directive from city council, will appear to oppose the proposed legislation including the Eventide Home, arguing it is a commercial operation.